RECENT IMPORTANT DECISIONS

CONSTITUTIONAL LAW—ADOPTION AND AMENDMENT—REARRANGEMENT NOT A NEW CONSTITUTION.—A convention was authorized to propose revision, alterations, or amendments to the existing state Constitution. After proposing several amendments which were adopted at popular elections, the convention appointed a special committee to draft a rearrangement of the Constitution and amendments. The reported rearrangement contained slight changes of substance, while declaring that "Such Rearrangement shall not be deemed * * * to change the meaning or effect of any part of the Constitution * * * as theretofore existing or operative." This Rearrangement was adopted by the convention and ratified by the voters by a large majority. Following an advisory opinion by the supreme court, the administrative officials refused to publish the Rearrangement as the Constitution. On mandamus, *held,* the Rearrangement is not the state Constitution. *Loring* v. *Young,* (Mass., 1921), 132 N. E. 65.

The law is well acquainted with judicial review of the method of adopting constitutional amendments. *McConaughy* v. *Secy. of State,* 106 Minn. 392, and cases cited. Courts have taken cognizance of the possibility of amendments contradictory in terms being adopted at the same election. *In re Senate File 31,* 25 Neb. 864; *McBee* v. *Brady,* 15 Ida. 761. But the solution of the conundrum, "When is a Constitution not a Constitution?" appears to be unique. The reasoning in the instant case is somewhat elusive, but the theory seems to be that the committee which drafted the Rearrangement, the convention which adopted and submitted it to the people, and the sovereign people who voted for it did not intend to adopt a new Constitution but merely a more or less convenient digest or index of the Constitution of 1780 and its sixty-six amendments. The absurdity of the result would almost answer the argument upon which it is based. Article 157, quoted above, is somewhat ambiguous. The sensible and widely quoted rule of construction was laid down by Lord Coke that each part of a statute should be construed with reference to the other parts and with a view to the mischief it was intended to remedy. Co. LIT., 381a. In applying this rule to Article 157 much help is found in the other sections. The document is entitled, "A Constitution, or Form of Government." Article 158 declares that "This form of government shall be * * * a part of the laws of the land." The first sentence of Article 157 provides that the Constitution should thereafter be published in such rearranged form. These provisions seem consistent only with the idea that a Constitution rather than a digest was intended. The evil to be remedied was the clumsy and unintelligible form of the Constitution of 1780 with its sixty-six amendments which made many parts obsolete. How this evil is to be remedied by a digest, which, in view of the changes in substance, is not even accurate, is far from clear. The most plausible con-

struction of the ambiguous part of Article 157 would be that provisions in the Rearrangement should receive the same interpretation as similar provisions in the Constitution of 1780 had received. This obviously would not apply to the instances of change in substance. In the last analysis, it must be remembered that the source of all constitutional authority is the will of the people, and it is submitted that the majority of the court displayed an over-technical attitude toward the people's solemn pronouncement. See COOLEY ON CONSTITUTIONAL LIMITATIONS [7th Ed.], 91 and 101, and DODD ON THE REVISION AND AMENDMENT OF STATE CONSTITUTIONS, 102.

CONSTITUTIONAL LAW—DUE PROCESS—OPERATION ON PRISONER WITHOUT A HEARING.—Acts 1907, c. 215, authorized the board of managers of institutions intrusted with the care of defectives and confirmed criminals to perform an operation of vasectomy on an inmate, if deemed advisable to prevent procreation, but gave the inmate no opportunity to cross-examine the experts who decided upon the operation, or to controvert their opinion. *Held,* unconstitutional as denying due process of law. *Williams et al.* v. *Smith,* (Ind., 1921), 131 N. E. 2.

It might be of interest to note that the operation of vasectomy (which consists of ligating and resecting a small portion of the *vas deferens*) was performed for the first time in this country by Dr. H. C. Sharp on certain convicts in the Indiana State Reformatory in 1899, and that the subsequent statute in that state, here declared unconstitutional, was the first one of its kind in the United States. The decision in the Indiana case is placed upon the ground that the statute deprives the prisoner of his day in court, in violation of the Fourteenth Amendment of the federal Constitution, the court citing *Davis* v. *Berry,* 216 Fed. 413, which held an Iowa statute unconstitutional for the same reason. In the latter case, however, the statute was a penal one, the operation being authorized on all criminals who had been twice convicted of a felony, and the court declared it unconstitutional for the further reason that it was a cruel and unusual punishment in violation of the Eighth Amendment of the Constitution. In this the case squarely refused to follow *State* v. *Feilen,* 70 Wash. 65. In Michigan a statute (1 COMP. L., 1915, Sec. 5176 *et seq.*) providing for sterilization of mentally defective persons maintained wholly or in part by public expense was held unconstitutional in *Haynes* v. *Lapeer Circuit Judge,* 201 Mich. 138, the court saying:

> "In this enactment the legislature selected out of what might be termed a natural class of defective and incompetent persons only those already under public restraint, leaving immune from its operation all others of like kind to whom the reason for the legislative remedy is normally and equally, at least, applicable, extending immunities and privileges to the latter which are denied the former."

A similar statute was held unconstitutional in New Jersey for the same reason. *Smith* v. *Board of Examiners,* 85 N. J. Law, 46. The holding of the principal case is right from the standpoint of law and fairness. The field of negative eugenics is a new one, and authorities are not agreed as to